



**6712-01**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 73**

**[MB Docket No. 18-214, GN Docket No. 12-268; FCC 18-113]**

**LPTV, TV Translator, and FM Broadcast Station Reimbursement, Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Commission proposes rules to implement Congress's recent directive that we reimburse certain Low Power Television (LPTV), television translator (TV translator), and FM broadcast stations for costs incurred as a result of the Commission's broadcast television spectrum incentive auction. When Congress authorized the Commission to conduct the incentive auction, it required the Commission to reimburse certain costs incurred by full power and Class A television licensees and multichannel video program distributors (MVPDs). On March 23, 2018, Congress adopted the Reimbursement Expansion Act (REA), which, among other things, expands the list of entities eligible to be reimbursed for auction-related expenses to include LPTV, TV translator, and FM broadcast stations, and to provide additional funds to the Reimbursement Fund to be used for this purpose. The REA requires the Commission to complete a rulemaking to adopt a reimbursement process for LPTV, TV translator, and FM stations within a year from the adoption date of the Act. This NPRM commences the proceeding to implement this directive and enable the Commission to meet this statutory deadline.

**DATES:** Comments may be filed on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]; and reply comments may be filed on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Interested parties may submit comments and reply comments, identified by MB Docket No. 18-214 and GN Docket No. 12-268, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Federal Communications Commission's web site: <http://fjallfoss.fcc.gov/ecfs2/>. Follow the instructions for submitting comments.
- Mail: Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: (202) 418-0530 or TTY: (202) 418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the supplementary information section of this document.

**FOR FURTHER INFORMATION CONTACT:** Kim Matthews of the FCC's Media Bureau, Policy Division, [Kim.Matthews@fcc.gov](mailto:Kim.Matthews@fcc.gov), (202) 418-2154.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM), FCC 18-113, adopted August 2, 2018 and released August 3, 2018. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445

12th Street SW, Room CY-A257, Washington, D.C. 20554. The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW, Room CY-B402, Washington, DC 20554. This document will also be available via ECFS at <http://fjallfoss.fcc.gov/ecfs/>. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format) by sending an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

The NPRM may result in new or revised information collection requirements. If the Commission adopts any new or revised information collection requirements, the Commission will publish a notice in the Federal Register inviting the public to comment on such requirements, as required by the Paperwork Reduction Act of 1995. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, the Commission will seek specific comment on how it might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

## **Synopsis**

### **I. INTRODUCTION**

1. In the NPRM, we propose rules to implement Congress's recent directive that we reimburse certain LPTV, TV translator, and FM broadcast stations for costs incurred as a result of the Commission's broadcast television spectrum incentive auction. When Congress authorized the Commission to conduct the incentive auction as part of the 2012 Spectrum Act, it required the Commission to reimburse certain costs incurred by full power and Class A television licensees that were reassigned to new channels as a result of the auction, as well as certain costs incurred by multichannel video program distributors (MVPDs) to continue to carry

such stations. (47 U.S.C. 1452) On March 23, 2018, Congress adopted the Reimbursement Expansion Act (REA), which amends Section 6403 of the Spectrum Act to expand the list of entities eligible to be reimbursed for auction-related expenses to include LPTV, TV translator, and FM broadcast stations, and to provide additional funds to the Reimbursement Fund to be used for this purpose. (47 U.S.C. 1452(j) through (n)) The REA also increases the funds available to reimburse full power and Class A stations and MVPDs, and provides funds to the Commission for consumer education.

2. In this NPRM, we propose a mechanism for reimbursing the newly eligible entities that is substantially similar to the process we currently use to reimburse full power and Class A licensees and MVPDs as established in the Incentive Auction R&O. See Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, Report and Order, 79 FR 48442 (Aug. 15, 2014) (Incentive Auction R&O). Among the key proposals are the following:

- We tentatively conclude that LPTV and TV translator stations (collectively referred to herein as LPTV/translator stations) are eligible for reimbursement if (1) they filed an application during the Commission's Special Displacement Window and obtained a construction permit, and (2) were licensed and transmitting for at least 9 of the 12 months prior to April 13, 2017, as required by the REA.
- We also tentatively conclude that we will reimburse LPTV/translator stations for their reasonable costs to construct the facilities authorized by the grant of the station's Special Displacement Window application, but will require stations to reuse existing equipment and take other measures to mitigate costs where possible.
- With respect to FM broadcast stations, we tentatively conclude that both full power FM stations and FM translators that were licensed and transmitting on April 13, 2017, using the facilities

impacted by the repacked television station are eligible for reimbursement under the REA. We propose that this will include FM stations that incur costs because they must permanently relocate, temporarily or permanently modify their facilities, or purchase or modify auxiliary facilities to provide service to at least 80 percent of their primary station's coverage area or population during a period of time when construction work is occurring on a collocated repacked television station's facilities.

- We propose to reimburse up to 100 percent of the costs eligible for reimbursement for FM stations that must relocate permanently, or temporarily or permanently modify facilities. We seek comment on a graduated, prioritized system to reimburse FM stations for the cost to purchase or modify auxiliary equipment to avoid going silent as a result of the repacking process.
- We propose to require LPTV/translator and FM stations seeking reimbursement to file with the Commission one or more forms certifying that they meet the eligibility criteria established in this proceeding for reimbursement, providing information regarding their current broadcasting equipment, and providing an estimate of their costs eligible for reimbursement. We invite comment on ways to streamline the submission of this information for these entities.
- We propose that after the submission of information, the Media Bureau will provide eligible entities with an allocation of funds, to be available for draw down as the entities incur expenses. We propose that the Media Bureau will make an initial allocation toward eligible expenses, followed by subsequent allocation(s) as needed, to the extent funds remain for LPTV/translator stations and FM stations in the Reimbursement Fund, and we seek comment on how to determine the amount of these allocations.
- We propose to use revised versions of the financial forms currently being used by full power, Class A, and MVPD entities for purposes of reimbursing eligible LPTV/translator and FM stations, and we propose to use the same procedures to provide reimbursement payments to these newly eligible entities.

- We discuss the measures we propose to take to protect the Reimbursement Fund against waste, fraud, and abuse.

3. The Commission adopted a companion Order together with the NPRM. That Order is the subject of a separate Federal Register summary.

## **II. BACKGROUND**

### **A. Reimbursement Expansion Act**

4. On March 23, 2018, Congress adopted the REA, directing the Commission to “reimburse costs reasonably incurred” by a TV translator or LPTV station in order to “relocate” to another channel or “otherwise modify” its facility as a result of the reorganization of broadcast television spectrum. In addition, the REA directs the Commission to “reimburse costs reasonably incurred” by an FM station “for facilities necessary for such station to reasonably minimize disruption of service” as a result of the reorganization of broadcast television spectrum. The REA also provides funding for the Commission to make payments for the purpose of consumer education relating to the reorganization of broadcast television spectrum.

5. The REA appropriates a total of \$1 billion in additional funds for the Reimbursement Fund, \$600 million in fiscal year 2018 and \$400 million in fiscal year 2019. Of the \$600 million appropriated in fiscal year 2018, the Act authorizes the Commission to use “not more than” \$350 million to make reimbursements to full power and Class A stations and MVPDs pursuant to the Spectrum Act, “not more than” \$150 million to reimburse TV translator and LPTV stations, “not more than” \$50 million to reimburse FM broadcast stations, and \$50 million to make “payments solely for the purposes of consumer education relating to the reorganization of broadcast television spectrum” pursuant to the Spectrum Act. We seek comment below on two different interpretations of the statutory provisions that relate to the availability of the \$400 million appropriated in fiscal year 2019 and, specifically, on whether

these funds are available to reimburse newly eligible LPTV, TV translator, and FM broadcast stations, in addition to full power, Class A, and MVPD entities.

6. The REA establishes a number of conditions on the availability and use of the \$1 billion it appropriates to the Reimbursement Fund. First, it provides that these funds are available only if the Commission makes a certification “to the Secretary of the Treasury that the funds available prior to the date of enactment” of the REA “in the TV Broadcaster Relocation Fund are likely to be insufficient to reimburse reasonably incurred costs” of full power and Class A stations and MVPDs pursuant to the Spectrum Act. Second, it provides that the funds may be used by the Commission to make payments after April 13, 2020, only if, “before making any such payments after such date, the Commission submits to Congress a certification that such payments are necessary to reimburse” costs reasonably incurred by entities eligible for reimbursement pursuant to the Spectrum Act and the REA. Third, the REA requires that the Commission use the funds it appropriates to make all reimbursements to full power and Class A stations, MVPDs, LPTV/translators, and FM stations by July 3, 2023, at the latest. The Commission may, however, establish an earlier date by which its reimbursement program will end if it certifies to the Secretary of the Treasury that all reimbursements to full power, Class A, and MVPDs, as specified by the Spectrum Act, and all reimbursements to LPTV/translators and FM stations, as specified by the REA, have been made.

7. Section 511(k)(3) of the REA states that duplicative payments to “a low power television station that has been accorded primary status as a Class A television licensee under [47 CFR 73.6001(a)]” from the Reimbursement Fund are prohibited. Specifically, such licensee may not receive reimbursement under Section 511(k)(1) of the REA, which provides for reimbursement of eligible displaced LPTV/translator stations, if such station has received reimbursement under

Section 6403(b)(4)(A)(i) of the Spectrum Act (including the additional funding made available for reimbursing full power, Class A, and MVPDs in Section 511(j)(2)(A)(i) of the REA).

Similarly, Section 511(k)(3)(B) specifies that if such station receives reimbursement under Section 511(k)(1) of the REA, it may not receive reimbursement under Section 6403(b)(4)(A)(i) of the Spectrum Act. Section 511(k)(3)(A) also provides that if a low power television station that has been accorded primary status as a Class A television licensee receives reimbursement “from any other source, such station may not receive reimbursement under paragraph 1” of Section 511(k), which permits reimbursement of costs reasonably incurred by eligible LPTV/translator stations that filed in the Special Displacement Window. Section 511(l)(1)(C) states that “[i]f an FM broadcast station has received a payment for interim facilities from the licensee of a television broadcast station that was reimbursed for such payment” under the Spectrum Act, “or from any other source,” such FM broadcast station may not receive reimbursement under the REA.

8. Finally, the REA requires the Commission to complete a rulemaking to implement a reimbursement process for LPTV, TV translator, and FM stations “[n]ot later than 1 year” after the adoption of the Act, or by March 23, 2019. It also directs that the rulemaking include “the development of lists of reasonable eligible costs to be reimbursed by the Commission” and “procedures for the submission and review of cost estimates and other materials related to those costs consistent with the regulations developed by the Commission” in establishing the reimbursement process for full power, Class A, and MVPD entities.

## **B. Incentive Auction and Transition Period**

9. Congress authorized the Commission to conduct the incentive auction to help meet the Nation’s growing spectrum needs. In the “reverse auction” phase of the incentive auction,



television broadcasters had the opportunity to voluntarily relinquish some or all of their broadcast television spectrum usage rights in exchange for a share of the proceeds from a “forward auction” of new, flexible-use licenses suitable for mobile broadband use. In the Incentive Auction R&O, the Commission adopted its proposal to limit reverse auction participation to licensees of commercial and noncommercial educational (NCE) full power and Class A stations.

10. Stations that remained on the air after the auction were reorganized during the “repacking” process to occupy a smaller portion of the television spectrum, and some were assigned new channels to clear spectrum for use by wireless providers. The Commission specified that full power and Class A facilities that already were operating pursuant to a license (or a pending application for a license to cover a construction permit) on February 22, 2012, would be protected in the repacking process, as Congress required. The Commission also exercised its discretion to protect certain, additional full power and Class A stations. The Commission declined to protect other categories of facilities, including LPTV/translator stations, on the basis that such facilities are secondary in nature and protecting them would have unduly restrained the agency’s flexibility in the repacking process and undermined its ability to meet the goals of the incentive auction.

11. On April 13, 2017, after the conclusion of auction bidding, the Incentive Auction Task Force and the Media and Wireless Telecommunications Bureaus released the Closing and Channel Reassignment PN, which announced the completion of the auction, the auction results, and the broadcast television channel reassignments. The release of the Closing and Channel Reassignment PN also commenced the 39-month post-auction transition period (transition period) during which all reassigned stations must transition to their post-auction channel

assignments. Reassigned stations had three months, or until July 12, 2017, to file construction permit applications for any minor changes to their facilities needed to operate on their new channels. Following the three-month application filing deadline, stations have up to 36 months, or until July 13, 2020, to transition to their new channels.

12. To ensure an orderly, managed transition process, the Commission established a phased construction schedule for the transition period and grouped all full power and Class A television stations transitioning to new channels into one of 10 transition phases. The Closing and Channel Reassignment PN announced the specific transition phase, phase completion date, and testing period applicable to each transitioning station.

### **C. LPTV and TV Translator Stations and FM Broadcasters**

13. LPTV and TV Translators. LPTV/translator stations are secondary to full power television stations, which may be authorized and operated “without regard to existing or proposed low power TV or TV translator stations.” LPTV/translator stations were not eligible to participate in the incentive auction and were not eligible for reimbursement pursuant to the Spectrum Act. In addition, while the Spectrum Act required the Commission to make “all reasonable efforts” to preserve the coverage area and population served of eligible full power and Class A television stations in the incentive auction repacking process, as noted above, LPTV/translator stations were not protected. Accordingly, the Incentive Auction R&O noted the potential for a significant number of LPTV/translator stations to be displaced as a result of the auction or repacking process which would require them either to find a new channel from the smaller number of channels that remain in the reorganized broadcast television bands or to discontinue operations altogether.

14. The Commission has taken a number of steps to mitigate the impact of the auction and repacking process on LPTV/translator stations. The Media Bureau opened a special filing window on April 10, 2018 to offer operating LPTV/translator stations that are displaced an opportunity to select a new channel. That displacement window closed on June 1, 2018. In total, the Commission received 2,159 applications during the window which are currently under consideration. Applicants will have the opportunity to resolve any mutual exclusivity through settlement or engineering amendments filed prior to the close of a Settlement Window to be announced by the Media Bureau. Should applications remain mutually exclusive after the Settlement Window, a schedule will be set for them to be resolved subject to the Commission's competitive bidding rules.

15. Some LPTV/translator stations have already been displaced. Pursuant to our rules, LPTV/translator stations that were on channels 38 through 51 must terminate operations if they receive notice of likely interference to a new 600 MHz Band licensee that intends to commence operations or conduct first field application (FFA) testing on their licensed 600 MHz spectrum. The Commission has granted a number of 600 MHz licenses, which authorized the licensees to construct facilities on their new spectrum. T-Mobile USA (T-Mobile), one of the recipients of those licenses, provided notices to certain LPTV and TV translator stations that it would commence operations or conduct FFA testing on some of its licensed spectrum before the opening of the Special Displacement Window. The Commission therefore provided tools to these "early displaced" LPTV/translator stations to ensure that they would be able to continue to broadcast. One of these tools was for a displaced station to submit a displacement application prior to the opening of the Special Displacement Window with a request for waiver of the current displacement freeze, and file for Special Temporary Authority to temporarily operate the facility

proposed in the displacement application. The Tools PN further explained that applications filed with a request for waiver of the displacement freeze would be treated as if filed on the last day of the Special Displacement Window and processed in accordance with the rules for that window. Approximately 340 displacement applications were filed prior to the Special Displacement Window pursuant to the Tools PN. Independent of the Tools PN, T-Mobile created a Supplemental Reimbursement Plan whereby it committed to pay the reasonable costs associated for such stations to move from a temporary channel to a permanent channel if the station's displacement application for the temporary channel was not granted and the station therefore needs to move twice. In addition, T-Mobile and PBS announced in June 2017 that T-Mobile had committed to cover the costs for PBS translator stations to relocate their frequencies following the incentive auction.

16. FM Broadcasters. FM broadcasters were not eligible to participate in the auction, were not subject to the repacking process, and were not eligible for reimbursement pursuant to the Spectrum Act. While FM spectrum was not subject to reorganization in the repacking process, FM stations may be affected by the reorganization of broadcast television spectrum if, for example, an FM station shares a tower with a repacked TV station. Changes to the facilities of the TV station could affect the FM station if, for example, the FM station antenna must be moved, either temporarily or permanently, to accommodate the TV station's change or if an FM station needs to power down, or cease operating temporarily, to permit a repacked TV broadcaster to modify its facilities. In total, we estimate this could include fewer than 500 full-service stations.

#### **D. Full Power, Class A, and MVPD Reimbursement Process**

17. As we initiate the proceeding to reimburse additional entities affected by the reorganization of broadcast television spectrum, we find the current eligibility criteria, process, and procedures associated with the Reimbursement Fund instructive. We summarize pertinent details below.

18. The Spectrum Act requires the Commission to reimburse full power and Class A broadcast television licensees for costs “reasonably incurred” in relocating to their new channels assigned in the repacking process, and to reimburse MVPDs for costs “reasonably incurred” in order to continue to carry the signals of stations relocating to new channels as a result of the repacking process or a winning reverse auction bid. Congress specified that these reimbursements be made from the Reimbursement Fund, and that the Commission make all reimbursements within three years after completion of the forward auction (Reimbursement Period). In the Incentive Auction R&O, the Commission concluded that, with respect to broadcast licensees, the Spectrum Act’s reimbursement mandate applies only to full power and Class A television licensees that are involuntarily reassigned to new channels in the repacking process.

19. In the Incentive Auction R&O, the Commission established the reimbursement process that is currently in place. Following the release of the Closing and Channel Reassignment PN, entities seeking reimbursement provided information regarding their existing broadcasting equipment and their plan to accomplish the channel transition, including an estimate of their eligible costs, by filing FCC Form 2100, Schedule 399 (the Reimbursement Form), in the Media Bureau’s Licensing and Management System (LMS). Estimated costs could be provided by the entity or by using predetermined cost estimates based on the Catalog of Potential Expenses and Eligible Costs (Catalog of Reimbursement Expenses, or Catalog) developed by the Media

Bureau. The Catalog sets forth categories of expenses that are most likely to be commonly incurred by broadcasters and MVPDs as a result of the repacking process, together with ranges of prices for the potential expenses. The Media Bureau, with assistance from a contractor with extensive experience in television broadcast engineering and Federal funds management (Fund Administrator), reviews the cost estimates.

20. The Commission's goal is to ensure that reimbursement funds are allocated fairly and consistently across all eligible entities and, at the same time, to have sufficient flexibility to make reasoned allocation decisions that maximize the funds available for reimbursement. To this end, reimbursement funds are being allocated in tranches, with the allocation amounts calculated based in part on the total amount of repacking expenses reported on the estimated cost forms as well as the amount of money available in the Reimbursement Fund. On October 16, 2017, an initial allocation of approximately \$1 billion was made, which represented approximately 52 percent of the then-current verified cost estimates for commercial stations and MVPDs, and 62 percent for NCE broadcasters. A further allocation of approximately \$742 million was made on April 16, 2018, providing all repacked full power and Class A stations and MVPDs access to approximately 92.5 percent of their then-current verified cost estimates. The Commission will continue to monitor closely the draw-down of the Reimbursement Fund to determine if additional allocations are warranted.

21. The allocation is available for draw down and reimbursement from the U.S. Treasury as the entities incur expenses eligible for reimbursement and submit invoices that are approved for payment. Entities draw down against their individual allocations using the Reimbursement Form to report incurred expenses and upload invoices or receipts into LMS. To facilitate the disbursement of reimbursement payments, entities were also required to submit payment

instructions to the Commission by (i) submitting a signed and notarized FCC Form 1876, along with a bank account verification letter or redacted bank statement that confirms ownership of the bank account, for each Facility ID/File Number receiving a reimbursement payment; and (ii) entering bank account information for the reimbursement payment recipient in the CORES Incentive Auction Financial Module.

22. Prior to the end of the three-year Reimbursement Period, entities must provide information regarding their actual and remaining estimated costs and will be issued a final allocation, if appropriate, to cover the remainder of their eligible costs. If any allocated funds remain in excess of the entity's actual costs determined to be eligible for reimbursement, those funds will revert back to the Reimbursement Fund. In addition, if an overpayment is discovered, even after the end of the Reimbursement Period, entities will be required to return the excess to the Commission.

### **III. NOTICE OF PROPOSED RULEMAKING**

#### **A. Amounts Available for Reimbursement**

23. As an initial matter, we seek comment on how to interpret the statute with respect to amounts available to reimburse eligible entities pursuant to the REA using funds appropriated for fiscal year 2019. Section 511(j)(1) of the REA appropriates funds “to the TV Broadcaster Relocation Fund established by [47 U.S.C. 1452(d)]”—specifically, \$600 million for fiscal year 2018 and \$400 million for fiscal year 2019. Section 511(j)(2) of the REA discusses the “availability of funds” and provides that, if the Commission makes the required certification, “amounts made available to the TV Broadcaster Relocation Fund by [Section 511(j)(1)] shall be available to the Commission to make” certain specified payments. In particular, Section 511(j)(2)(A) states that funds appropriated in Section 511(j)(1) shall be available to the

Commission to make payments required by the Spectrum Act and the REA, including “not more than” \$350 million to reimburse full power and Class A stations and MVPDs from fiscal year 2018 funds, “not more than” \$150 million to reimburse LPTV and TV translator stations from fiscal year 2018 funds, and “not more than” \$50 million to reimburse FM broadcast stations from fiscal year 2018 funds. It also states that funds appropriated in Section 511(j)(1) shall be available to the Commission to make payments “solely for the purposes of consumer education relating to the reorganization of broadcast television spectrum,” including \$50 million from the funds available for fiscal year 2018. While Section 511(j)(2)(A) clearly delineates the availability of funds for fiscal year 2018, it does not do so with respect to fiscal year 2019 funding.

24. We therefore seek comment on whether the \$400 million appropriated to the Reimbursement Fund for fiscal year 2019 is only available to reimburse eligible full power and Class A stations and MVPDs for costs reasonably incurred in the repacking process or whether the REA also permits this money to be used to reimburse LPTV, TV translators, and FM broadcast stations, as well as to fund the Commission’s consumer education efforts.

25. If the Commission were to interpret the statute to find that it is authorized to reimburse eligible LPTV, TV translator, and FM broadcast stations and to fund consumer education efforts from the fiscal year 2019 funds, in addition to reimbursing full power, Class A, and MVPD entities, we seek comment on whether and how the Commission should prioritize this funding.

While we have received estimates of the costs that full power and Class A stations anticipate as a result of their channel reassignments, we have no estimates to date of the costs that will be incurred by LPTV, TV translator, and FM stations. Moreover, as we have indicated, we anticipate that the estimates for full power and Class A stations will increase as their construction



process continues. It is therefore possible that there will be significant demand on the Reimbursement Fund from all categories of eligible entities such that the total amount available may not be sufficient to cover all their eligible expenses. If so, should the Commission prioritize the payments to full power and Class A stations over those of FM stations and LPTV/translator stations? We also seek comment on whether the Commission should prioritize the payment of full power and Class A stations over any aggregate costs exceeding the limits described in Section 511(j)(2) of \$50 million for FM stations and \$150 million for LPTV/translator stations. In other words, should the Commission consider reimbursement of costs above those aggregate amounts for FM and LPTV/translator stations only after full power and Class A expenses are fully satisfied? We seek comment on these issues.

**B. LPTV and TV Translator Stations – Eligibility and Expenses**

26. As discussed above, the REA authorized the Commission to reimburse “costs reasonably incurred by a television translator or low power television station on or after January 1, 2017, in order for such station to relocate its television service from one channel to another channel or otherwise modify its facility as a result of the reorganization of broadcast television spectrum” under Section 6403(b) of the Spectrum Act. In this section, we seek comment on issues related to eligibility and expenses under the REA provisions for reimbursement of displaced LPTV and TV translator stations.

**1. Stations Eligible for Reimbursement**

**a. LPTV/Translator Stations**

27. The REA provides that costs reasonably incurred by certain “television translator station[s] or low power television station[s]” to relocate channels or modify facilities as a result of the reorganization of broadcast television spectrum are eligible for reimbursement. The REA

specifies that these two types of stations are to be defined pursuant to the definition included in 47 CFR 74.701. We interpret this provision to mean that LPTV and TV translator stations, as defined by § 74.701 of our rules, may be eligible for reimbursement under the Reimbursement Fund if they meet the additional eligibility criteria discussed below, and we seek comment on this interpretation.

**(i) Special Displacement Window Eligibility Criteria**

28. The REA provides that “[o]nly stations that are eligible to file and do file an application in the Commission’s Special Displacement Window are eligible to seek reimbursement.” The Media Bureau has provided that, to be eligible to file in the Special Displacement Window, a station had to be an LPTV/translator station that was “operating” on April 13, 2017 – the date of the release of the Closing and Channel Reassignment PN. Furthermore, for this purpose, a station is “operating” if it had licensed its authorized construction permit facilities or had an application for a license to cover on file with the Commission on that date. The station must also be “displaced . . . as a result of the broadcast television spectrum incentive auction.”

Therefore, we tentatively conclude that, to be eligible for reimbursement, a station must be an LPTV/translator station that was eligible to file and did file an application during the Special Displacement Window. As noted above, the Commission received 2,159 applications during the window which, subject to the other eligibility requirements, represents the largest possible universe of LPTV/translator stations that could be eligible for reimbursement.

29. While the threshold eligibility criteria set forth in the REA require only that a station was “eligible to file and [did] file an application” in the Special Displacement Window, we tentatively conclude that, to be eligible for reimbursement, a station’s displacement application filed during the Special Displacement Window (or prior to the window with grant of a waiver, or

subsequently amended prior to the close of the Settlement Window) must be granted. Although this requirement is not mandated by the REA, we believe that this additional criterion is essential to ensure the integrity of the reimbursement program and is consistent with Section 511(k)(1), which requires reimbursement of only costs reasonably incurred to “relocate . . . television service from one channel to another channel . . . or otherwise modify [a] facility.” We believe that eligibility must be limited to stations with valid displacement construction permits obtained through the procedural mechanisms associated with the Special Displacement Window that will permit them to construct the displacement facilities for which they receive reimbursement. Otherwise, providing reimbursement to eligible stations whose applications are not granted will result in reimbursement for expenses related to facilities that will not be constructed to “relocate . . . television service from one channel to another channel . . . or otherwise modify [a] facility.” We seek comment on this tentative conclusion.

30. An LPTV/translator station that filed in the Special Displacement Window whose application is dismissed may subsequently file a displacement application when the Media Bureau lifts the freeze on the filing of such applications. We tentatively conclude that such stations will be eligible for reimbursement under the REA if their later-filed displacement application is subsequently granted. Although they would receive their construction permit through a displacement application that was not filed during the Special Displacement Window, these stations would meet the threshold eligibility criteria under the REA because such stations were “eligible to file and [did] file an application” in the Special Displacement Window. In addition, such stations are affected by the reorganization of broadcast television spectrum in the same way as other displaced LPTV/translator stations. We seek comment on whether and how such stations could be included in the reimbursement process considering that they will not be

able to meet the same filing deadlines applicable to other eligible LPTV/translator stations that have applications granted in the Special Displacement Window and, depending on the demand on the Reimbursement Fund, this difference could result in a lack of reimbursement resources. Would allowing such stations to be eligible for reimbursement be appropriate given the finite resources of the Reimbursement Fund? Should such stations be eligible for reimbursement only to the extent funds remain available for LPTV/translator stations in the Reimbursement Fund?

**(ii) “Licensed and Transmitting” Eligibility Criteria**

31. The REA provides that only stations that were “licensed and transmitting for at least 9 of the 12 months prior to April 13, 2017,” are eligible to receive reimbursement under the REA. The statute also specifies that “the operation of analog and digital companion facilities may be combined” for purposes of the “licensed and transmitting” requirement. We propose that, consistent with the eligibility requirement for participation in the Special Displacement Window, stations that were licensed or that filed a license to cover application prior to April 13, 2017, be considered “licensed” for purposes of REA reimbursement eligibility.

32. Because neither Commission rules nor the REA specifies a definition of “transmitting” we propose a definition that relies on the Commission’s minimum operating schedule rule for commercial full power television broadcast stations. That rule provides that commercial full power television stations must “operate” not less than 2 hours in each day of the week and not less than a total of 28 hours per calendar week. Therefore, we propose that, in order to be considered “transmitting,” stations seeking reimbursement under the REA must have been operating not less than 2 hours in each day of the week and not less than a total of 28 hours per calendar week for 9 of the 12 months prior to April 13, 2017. We believe that, given the finite nature of the Reimbursement Fund, it is necessary to give reasonable meaning to the eligibility

criteria set forth in the REA. By defining “transmitting” in the same way as we do for full power stations, we intend to prioritize reimbursement for LPTV/translator stations that provided more robust service to the public over those that were on the air for only a brief period each day. Because a translator station is required to retransmit the signal of a television station, we would expect that most, if not all, translators would meet this requirement. We believe that this requirement reflects the legislative mandate that only “transmitting” stations be eligible to receive reimbursement. We seek comment on this proposal.

33. We propose that stations be required to certify compliance with the minimum operating requirement we adopt as part of the reimbursement process. LPTV/translator stations may be required to provide evidence to support this certification, such as documentation of the programming aired by the station during the period of time in question, electric power bills, or other evidence showing that the station was transmitting during this time period. The Commission previously determined that, with respect to the incentive auction reimbursement program, “audits, data validations, and site visits are essential tools in preventing waste, fraud, and abuse, and that use of these measures will maximize the amount of money available for reimbursement.” With respect to reimbursing low-power broadcast stations, we contemplate that a third party firm on behalf of, or in conjunction with, the Media Bureau may conduct audits, data validations, site visits or other verifications to substantiate the supporting evidence and representations of entities that certify that they meet the eligibility criteria adopted in this proceeding to the extent necessary. We propose to direct such entities to make available any relevant documentation upon request from the Commission or its contractor. We emphasize that a false certification may result in disqualification and other sanctions provided for in the Communications Act and the Commission’s rules. We seek comment on these proposals.

**b. Other Eligible Stations**

34. Early Displaced Stations. We propose that LPTV and TV translator stations that were displaced early, were eligible to file in the Special Displacement Window, and filed a displacement application prior to the Special Displacement Window will be eligible for reimbursement under the REA. As described above, some LPTV/translator stations were displaced prior to the Special Displacement Window as a result of T-Mobile's decision to commence wireless operations in the 600 MHz band. As noted above, approximately 340 such stations filed a request for waiver of the displacement freeze and a request for an STA, and the Media Bureau has treated these filings as if filed on the last day of the Special Displacement Window. Such applications will be processed in accordance with the rules for that window. Because these stations meet the definition of LPTV/translator stations eligible for reimbursement under the REA, and their displacement applications were considered as filed during the Special Displacement Window, we propose that these stations will be eligible for reimbursement if they meet all of the other eligibility requirements. We seek comment on this proposal.

35. Replacement Translators. In the Incentive Auction R&O, the Commission concluded that digital low power TV translator stations authorized pursuant to § 74.787(a)(5) of the Commission's rules (analog-to-digital replacement translators, or DRTs) that were displaced by the incentive auction and repacking process are eligible to file displacement applications during the Special Displacement Window. Because DRTs are potentially displaced as a result of the reorganization of broadcast television spectrum, were eligible to file in the Special Displacement Window, and are considered "TV translators" and licensed under the same Part 74 rules as other TV translator stations, we propose that displaced DRTs also are eligible for reimbursement

pursuant to the REA, as long as they meet the other eligibility requirements. We seek comment on this proposal.

36. In the LPTV DTV Third R&O, the Commission established a new digital-to-digital replacement translator (DTDRT) service to allow eligible full power television stations to recover lost digital service area that could result from the repacking process. The Commission concluded that full power stations may begin to file for DTDRTs beginning with the opening of the Special Displacement Window on April 10, 2018, and ending one year after completion of the incentive auction transition period. Although they were eligible to file in the Special Displacement Window, and DTDRTs are similar to DRTs in that they are considered “TV translators” and licensed under the same Part 74 rules as other TV translator stations, we tentatively conclude that new DTDRTs are not eligible for reimbursement under the REA because they would not have been “licensed and transmitting” for 9 of the past 12 months prior to April 13, 2017, as required by the statute. In addition, even if they were otherwise eligible under the statutory criteria, DTDRTs are newly established facilities and thus are not “relocat[ing] . . . from one channel to another channel” or “modify[ing]” their facilities as required by the statute. We seek comment on this tentative conclusion.

37. Class A Television Licensees. As noted above, Section 511(k)(3) of the REA prohibits duplicative payments from the Reimbursement Fund to “a low power television station that has been accorded primary status as a Class A television licensee under [47 CFR 73.6001(a)].” Specifically, Section 511(k)(3)(A) provides that such licensee may not receive reimbursement under Section 511(k)(1) of the REA if such station has received reimbursement under Section 6403(b)(4)(A)(i) of the Spectrum Act (including the additional funding made available for reimbursing full power, Class A, and MVPDs in Section 511(j)(2)(A)(i) of the REA). We

interpret this language to underscore that Class A stations reimbursed from funds for Class A stations under the Spectrum Act or the REA are not eligible for reimbursement from funds dedicated to LPTV/translator reimbursement under the REA. Such Class A stations were not eligible to file an application during the Special Displacement Window and thus do not qualify for reimbursement for LPTV/translator stations under the REA. Similarly, Section 511(k)(3)(B) specifies that a low power television station that has been accorded primary status as a Class A television licensee that receives reimbursement under Section 511(k)(1) of the REA may not receive reimbursement under Section 6403(b)(4)(A)(i) of the Spectrum Act. We interpret this language to underscore that such stations that filed in the Special Displacement Window are not eligible for reimbursement under Section 6403(b)(4)(A)(i) because they are not full power or Class A stations involuntarily reassigned to a new channel in the repacking process. We seek comment on our interpretations.

## **2. Expenses Eligible for Reimbursement**

### **a. Costs Reasonably Incurred**

38. The REA provides that the Commission shall “reimburse costs reasonably incurred by a television translator station or low power television station on or after January 1, 2017, in order for such station to relocate its television service from one channel to another channel or otherwise modify its facility as a result of the reorganization of broadcast television spectrum” under the Spectrum Act. As discussed above, on April 13, 2017, we released the Closing and Channel Reassignment PN, which announced the completion of the auction, the auction results, the broadcast television channel reassignments made through repacking, and the 600 MHz Band plan reflecting the reallocations of broadcast television spectrum for flexible use and the frequencies that will serve as part of the 600 MHz Band guard bands. We interpret the REA to



provide for reimbursement of reasonably incurred relocation costs for LPTV/translator stations that were displaced “as a result of the reorganization of broadcast television spectrum” under the Spectrum Act, which includes displacement resulting from full power and Class A channel reassignments made in the Closing and Channel Reassignment PN and from the reallocation of broadcast television spectrum for flexible use by a 600 MHz Band wireless licensee or for use as 600 MHz Band guard bands.

39. While the Commission’s reorganization of television spectrum under Section 1452(b) of the Spectrum Act was completed with the issuance of the Closing and Channel Reassignment PN, the Commission also afforded reassigned stations the opportunity to file applications for alternate channels or expanded facilities during two filing windows that ended on September 15 and November 2, 2017. We anticipate that some LPTV/translator stations that filed applications during the Special Displacement Window may have been displaced by grant of an application filed during one of the alternate channel/expanded facilities filing windows, rather than the channel reassignments specified in the Closing and Channel Reassignment PN. While applications filed during the two filing windows by reassigned full power and Class A stations to modify their repacked facilities were not required under Section 1452(b) of the Spectrum Act, they may have resulted in displacement of LPTV/translator stations making those stations eligible to file applications in the Special Displacement Window. Accordingly, we seek comment on whether the REA’s requirement that we reimburse costs reasonably incurred “as a result of the reorganization of broadcast television spectrum” extends to include costs incurred by LPTV/translator stations that were displaced solely due to modifications made by full power and Class A facilities as a result of receiving authorizations through these two filing windows.

40. We tentatively conclude that the equipment and other costs necessary for an eligible LPTV/translator station to construct the facilities authorized by grant of the station's Special Displacement Window application shall be considered costs "reasonably incurred," and seek comment on this tentative conclusion. This approach is similar to the reimbursement program used for full power and Class A stations with the following distinction. In implementing the Spectrum Act's reimbursement provisions for full power and Class A stations reassigned to new channels, the Commission concluded that the Act required that it reimburse costs "that are reasonable to provide facilities comparable to those that a broadcaster . . . had prior to the auction that are reasonably replaced or modified following the auction, as a result of the repacking process, in order to allow the broadcaster to operate on a new channel. . . ." This included reimbursement "for modification or replacement of facilities on the post-auction channel consistent with the technical parameters identified in the Channel Reassignment PN." The Spectrum Act required that the Commission make "all reasonable efforts" in the repacking process to preserve coverage area and population served of full power and Class A stations. Thus, the post-auction channel reassignments specified in the Closing and Channel Reassignment PN were made at stations' existing locations and largely replicated stations' pre-auction facilities.

41. We do not believe that a similar "comparable" facilities reimbursement standard can, as a technical matter, be applied to displaced LPTV/translator stations. Displaced LPTV/translator stations, unlike full power and Class A stations, may need to move their transmitter and antenna locations in addition to changing channels. In order to continue to provide service to viewers from the new site, stations may need to increase their effective radiated power and height, which may require the purchase of transmitters, transmission lines, and other equipment that is not

“comparable” to their existing equipment. Therefore, we tentatively conclude that the equipment and other costs necessary for an eligible LPTV/translator station to construct the facilities authorized by grant of the station’s Special Displacement Window application shall be considered “reasonably incurred,” consistent with other reimbursement procedures and processes we propose herein (such as requiring broadcasters to reuse equipment and take other steps to mitigate costs where possible). We propose to permit LPTV/ translators to be reimbursed for both “hard” expenses, such as new equipment and tower rigging, and “soft” expenses, such as legal and engineering services, but, as discussed below, propose to direct the Media Bureau to prioritize, if necessary, the payment of certain hard costs necessary to operate the stations over soft costs to assure that such costs are recoverable to the extent possible under a limited fund. We seek comment on these tentative conclusions and on any alternative reimbursement approaches for eligible LPTV/translator stations. For example, should we permit as costs “reasonably incurred” those costs necessary to provide replacement facilities of comparable coverage? When reimbursing low-power broadcasters for equipment, to what extent could the Commission reimburse the costs for full service mask filters that could promote spectrum efficiency, even if the station technically could operate at its new location with a stringent or simple mask? Should such equipment be considered a “reasonably incurred” expense that is related to the repack because it would promote greater use of the television band or should it be considered an upgrade that is not eligible for reimbursement?

42. The REA limits reimbursement for LPTV/ translators to “costs . . . incurred . . . on or after January 1, 2017.” We propose to interpret this provision to require that an LPTV/translator station have either expended funds or ordered equipment or services for a cost otherwise eligible

for reimbursement on or after that date in order to be eligible for reimbursement pursuant to the REA. We invite comment on this proposal.

**b. Equipment Upgrades and Reuse of Existing Equipment**

43. In implementing the Spectrum Act's reimbursement provisions, the Commission concluded that it would not reimburse stations for new, optional features in equipment that are not already present in the equipment being replaced, and we propose to apply this same approach to eligible LPTV/translator stations. In addition, the Commission required full power and Class A stations seeking reimbursement to reuse their own equipment to the extent possible, rather than acquiring new equipment to be paid for from the Reimbursement Fund, and to "provide a justification when submitting their estimated cost form as to why it is reasonable under the circumstances to purchase new equipment rather than modify their . . . current equipment. . . ." We propose to adopt a similar requirement that displaced LPTV/translator stations reuse their own equipment to the extent possible, and that displaced LPTV/translator stations seeking reimbursement provide a justification why it is reasonable to purchase new equipment rather than reuse existing equipment. We seek comment on these proposals.

**c. Interim Facilities**

44. We propose to exclude "interim facilities" from the type of expenses eligible for reimbursement under the REA. In the Incentive Auction R&O, the Commission concluded that stations that are assigned a new channel in the incentive auction repacking process may need to use interim facilities to avoid prolonged periods off the air during the transition, and, thus, the Commission decided to reimburse full power and Class A stations for such facilities under the Spectrum Act reimbursement provisions. Because of their lower operating power and the fact that the engineering work that is involved in changing channels is more limited than for full

power television stations, we believe it is unlikely that LPTV/translator stations will construct interim facilities as part of the displacement process. Furthermore, LPTV/translators are actually displaced at a time determined either by the receipt of a notice from a wireless carrier that the wireless carrier intends to commence operations in the new 600 MHz wireless band or the phase completion date for a full power or Class A station pursuant to the transition schedule. Because LPTV/translators will have less time to construct interim facilities as a practical matter due to the timing of their actual displacement, interim facilities are unlikely to be utilized by such stations. We believe this proposal will also maximize the limited reimbursement funds available for all eligible LPTV/translator stations and seek comment on this analysis.

**d. Lost Revenues**

45. The REA, like the 2012 Spectrum Act, prohibits reimbursement of LPTV/translator stations for “lost revenues.” In the Incentive Auction R&O, the Commission defined “lost revenues” to include “revenues that a station . . . loses as a direct or ancillary result of the reverse auction or the repacking process.” We propose to adopt a similar definition of “lost revenues” for purposes of reimbursing LPTV/translator stations: “revenues that a station loses as a direct or ancillary result of the reorganization of broadcast television spectrum, including the repacking process and the reallocation of UHF spectrum in conjunction with the incentive auction.” Under this definition and consistent with the Commission’s approach in connection with reimbursing full power and Class A stations, we would not reimburse a station’s loss of advertising revenues while it is off the air during its displacement, or for refunds a station is required to make for payments for airtime as a result of being off the air in order to implement a channel change. We seek comment on our proposal and on whether there are other additional categories of costs that

LPTV/translator stations may incur that would constitute “lost revenues” not eligible for reimbursement under the REA.

**e. Costs to Resolve Mutually Exclusive Applications**

46. The REA provides that “[t]he Commission may not make reimbursement . . . for costs incurred to resolve mutually exclusive applications, including costs incurred in any auction of available channels.” Applications filed during the Special Displacement Window that remain mutually exclusive will be resolved through competitive bidding. We interpret the prohibition against reimbursing for “costs incurred in any auction” to mean that the Commission may not reimburse LPTV/translator station auction bidders under the REA for the costs related to filing an auction application associated with a competitive bidding process, participating in such an auction, and winning bid payments. We seek comment on this interpretation. We also tentatively conclude that costs associated with the Settlement Window to resolve mutual exclusivity will not be reimbursed under the REA. Thus, we propose not to reimburse stations for costs in resolving mutual exclusivity, including engineering studies and preparing application amendments, or the payment of other stations’ expenses as part of a settlement. However, we propose to reimburse for costs reasonably incurred in constructing the facilities resulting from settlement and coordination between mutually exclusive applicants. We seek comment on these proposals.

**f. Stations with Other Sources of Funding**

47. We seek comment on whether stations that receive or have received reimbursement of certain expenses from sources of funding other than the Reimbursement Fund should receive reimbursement for those expenses from the Reimbursement Fund. As an initial matter, we note that Section 511(k)(3)(A) specifies that Class A stations that receive reimbursement from “any

other source” may not receive reimbursement under the REA. While the REA does not set forth the same requirement for LPTV stations generally, we seek comment on whether a similar prohibition should extend to LPTV stations because a cost that is reimbursed by another source of funding is not a “cost . . . incurred” by the station under Section 511(k)(1). For example, we seek comment on whether displaced LPTV/translator stations that have received reimbursement from T-Mobile for a particular expense should receive reimbursement for that expense pursuant to Section 511(k)(1). As mentioned above, T-Mobile, which holds a number of 600 MHz licenses, began deploying its spectrum in 2017, thereby displacing a number of LPTV/translator stations before the Special Displacement Window opened on April 10, 2018. With respect to these displaced stations that began operating a displacement facility pursuant to an STA, T-Mobile has established a Supplemental Reimbursement Program, to be administered by T-Mobile. According to T-Mobile, it will reimburse eligible licensees “for the costs that they reasonably incur to comply with the permanent channel assignments that they may receive under the Special Displacement Window to the extent those channel assignments differ from the channel assignment these licensees may build following displacement from the 600 MHz band due to T-Mobile’s rapid broadband deployment.” Similarly, T-Mobile has reportedly awarded a grant to PBS to “provide funding to enable public television translators . . . to move to new displacement channels regardless of the reason for displacement.” We seek comment on how to address the interplay between the expanded Reimbursement Fund and such pre-REA funding for LPTV relocation.

48. We also seek comment on whether a displaced LPTV/translator station that has received a state governmental grant to construct its displacement facility should be eligible for reimbursement under the REA. Similarly, we seek comment on whether the licensee of a

displaced station that has solicited and received donations to construct its displacement facility should be eligible for reimbursement from the REA.

49. Finally, we seek comment on whether displaced LPTV/translator stations should be required to indicate on their reimbursement submissions whether they have received or expect to receive reimbursement from another source as part of the reimbursement process. If so, should they provide documentation of the amount that they have received or expect to receive and the associated eligible expenses covered by that alternate reimbursement? We seek comment on whether stations that are eligible to receive reimbursement from other sources for certain expenses (e.g., insurance) should be required to pursue those alternative sources before requesting reimbursement for those expenses pursuant to the REA, and on the type of documentation such stations should be required to provide.

### **C. FM Broadcast Stations – Eligibility and Expenses**

50. As mentioned above, in the REA, Congress allocated funds for the purpose of reimbursing costs “reasonably incurred by an FM broadcast station for facilities necessary for such station to reasonably minimize disruption of service as a result of the reorganization of broadcast television spectrum.” In this section, we seek comment on issues related to eligibility and expenses under the REA provisions for reimbursement of FM stations.

#### **1. Stations Eligible for Reimbursement**

##### **a. FM Broadcast Stations and FM Translator Stations**

51. Congress defined “FM broadcast stations” in the REA by referencing §§ 73.310 and 74.1201 of the Commission’s rules. Section 73.310 defines an FM broadcast station as “[a] station employing frequency modulation in the FM broadcast band and licensed primarily for the transmission of radiotelephone emissions intended to be received by the general public.”



Additionally, § 74.1201 defines an FM translator as “[a] station in the broadcasting service operated for the purpose of retransmitting the signals of an AM or FM radio broadcast station or another FM broadcast translator station without significantly altering any characteristics of the incoming signal other than its frequency and amplitude, in order to provide radio broadcast service to the general public.” Given these references, we tentatively conclude that “FM broadcast station” as used in the REA includes full-service FM stations and FM translator stations. We seek comment on this tentative conclusion. Further, although low-power FM (LPFM) stations were not specifically referenced in the REA, we note that such stations meet the criteria for “FM broadcast station” set forth in § 73.310 of the rules and they are licensed under Part 73 of the rules like full-service FM stations. We therefore seek comment on whether LPFM stations should also be considered “FM broadcast stations” for reimbursement purposes.

**b. Licensed and Transmitting at Time of Repack**

52. We tentatively conclude that to be eligible for reimbursement under the REA, an FM station must have been licensed and transmitting on April 13, 2017, and using facilities impacted by a repacked television station. We also tentatively conclude that only those costs associated with the impact at that location will be considered eligible. The REA seeks to reimburse costs “reasonably incurred” by FM stations to “reasonably minimize disruption of service” as a result of the reorganization of broadcast television spectrum, but provides no other additional specificity as to the eligibility of FM stations for reimbursement. We believe it is both necessary and appropriate to impose some reasonable standards on the eligibility of FM stations to be reimbursed from the Reimbursement Fund. We tentatively conclude that we should place the same limitation on FM stations that is applied to LPTV/translator stations. That is, we first propose a cut-off date of April 13, 2017, by which the FM station had to be licensed and

transmitting. We choose this date because it is the date on which reverse auction winners and the television stations subject to the repack were identified in the Closing and Channel Reassignment PN. Thus, we tentatively conclude that any FM station that began operating on a facility or at a location impacted by a repacked television station after that date voluntarily assumed the risk of any potential disruption of service to the FM station. We tentatively conclude that any costs incurred by FM stations that undertook such a risk are not “reasonably incurred” under the statutory standard and thus are not eligible for reimbursement pursuant to the REA. We propose that FM stations will be required to certify that they were licensed and transmitting at the facility implicated by the reorganization of broadcast television spectrum on April 13, 2017, and seek comment on this proposal. The REA requires reimbursement “to reasonably minimize disruption of service as a result of the reorganization of broadcast television spectrum under [47 U.S.C. 1452(b)].” As an initial matter, we tentatively conclude that an FM station can experience a service disruption “as a result of the reorganization of broadcast television spectrum under [47 U.S.C. 1452(b)]” either because a full power or Class A television station has been reassigned to a new channel in the Closing and Channel Reassignment PN or because a full power or Class A television station relinquished spectrum usage rights in the reverse auction. In either case, the full power or Class A television station may need to modify its facilities (e.g., dismantling equipment in the case of a license relinquishment station) that may impact the FM station. We read the statutory language to require a causal link between the facilities being reimbursed and the activities associated with the repacked full power or Class A television station, and likewise interpret this provision to mean that only the FM broadcast facilities directly impacted by the repacked television station are eligible for reimbursement. We believe our interpretation of this REA language is consistent with Congress’s provision of limited funds

for FM facility reimbursement. We invite comment on this interpretation of the REA. We also seek comment on whether the REA's requirement that we reimburse costs incurred by FM stations to "reasonably minimize disruption of service as a result of the reorganization of broadcast television spectrum under [47 U.S.C. 1452(b)]" extends to include costs that were incurred by FM stations solely due to modifications made by full power and Class A facilities as a result of receiving authorizations through the two alternate channel/expanded facilities filing windows.

**c. Categories of Eligible FM Stations**

53. In addition, we believe it is both necessary and appropriate to impose eligibility requirements for FM stations that define the way an FM station could "reasonably incur" costs as the result of a "disruption of service" caused by "the reorganization of broadcast television spectrum" as required by the REA. We believe a large majority of FM stations will not incur any costs or encounter any disruption of service as a result of the reorganization of broadcast television spectrum. However, in limited circumstances, as defined herein, some FM stations may be affected because they are collocated with, or adjacent, or in close proximity to, a repacked television station such that construction work on the repacked television station's facility necessarily results in a disruption of service to the FM station and requires the FM station to incur costs. Accordingly, we tentatively conclude that only stations that are collocated with, or adjacent, or in close proximity to, a repacked television station are eligible for reimbursement and that the FM station will be required to certify to that fact and identify the television station. We seek comment on these conclusions. We believe that only stations in the following categories will encounter any disruption of service as a result of the reorganization of broadcast television spectrum such that they would be eligible for reimbursement under the REA:

- Category (1) – Stations Forced to Relocate Permanently. We propose that this eligibility category include FM stations required either to vacate their towers, and which therefore incur costs for alternative facilities at a different site, or to relocate their antennas to a different level of their current towers. Either change would modify the station's transmissions and would thus require prior Commission approval. We anticipate that there will be a very small number of FM stations if any in this eligibility category.
- Category (2) – Stations Forced to Temporarily Dismantle Equipment or Make Other Changes Not Requiring Commission Approval. We propose that this eligibility category include FM stations required temporarily to dismount or disassemble equipment, most likely antennas, in order to accommodate work on a television antenna or a tower. We propose that this category also include FM stations required to physically move their transmitter to accommodate new television transmission equipment. While such an equipment move may not be temporary, it is not the kind of facility modification that would change the station's transmissions, and thus would not require Commission approval. We propose this category also include other types of necessary equipment modifications that do not require Commission approval. We anticipate there will be a very small number of FM stations in this eligibility category.
- Category (3) – Stations Forced to Temporarily Reduce Power or Cease Transmission on Their Primary Facility to Accommodate Antenna or Tower Modifications. We propose that this eligibility category would include those FM stations that are required to reduce power or go off the air to protect workers making modifications to television facilities on a tower from RF exposure. The length of time during which a station would have to reduce power or cease transmissions could range from hours to weeks or even months. Such stations could incur costs to build or modify auxiliary facilities to permit FM broadcast service to continue during this period. Category (3) would include stations with no existing auxiliary facilities and stations that are unable to access auxiliary transmission facilities. Category (3) would also include stations

that have existing auxiliary facilities, but whose facilities do not provide substantial (80+ percent) coverage of the primary station's coverage area or population. FM stations in other eligibility categories could also qualify as Category (3) stations if they otherwise meet the reimbursement requirements. We anticipate that this category of stations will be the most numerous of eligible FM stations but is still likely to include only a limited number of FM stations.

54. We believe that reimbursing FM stations for the types of service disruptions described in these categories is consistent with our statutory mandate to reimburse FM stations for "costs . . . for facilities necessary for such station to reasonably minimize disruption of service as a result of the reorganization of broadcast television spectrum," and we seek comment on our interpretation. We invite comment on the scope of our categories above and ask commenters specifically to explain whether there are additional categories of service disruption that should be reimbursed. We tentatively conclude that FM stations would be required to certify which eligibility category they satisfy, and we seek comment on that conclusion.

55. Section 511(l)(1)(C) specifies that an FM broadcast station that has received payment for "interim facilities" from either a station that was reimbursed under the Spectrum Act or "from any other source" may not receive "any reimbursements" under the REA. Thus, as required by the statutory language, we propose that if an FM broadcast station has received such payment for "interim facilities," it is ineligible for any reimbursement under the REA. We tentatively conclude that FM stations would be required to certify whether they have received payment for such interim facilities.

## **2. Expenses Eligible for Reimbursement**

56. The REA states that the Commission shall provide reimbursement for "costs reasonably incurred by an FM broadcast station for facilities necessary for such station to reasonably minimize disruption of service as a result of the reorganization of broadcast television spectrum."

We note that the statute does not require reimbursement of costs to ensure there is no disruption of service at all. We tentatively conclude that some level of disruption of service to eligible FM stations is reasonable, and we do not propose to reimburse costs incurred to avoid reasonable disruptions. We also believe that the public interest requires that we seek to maximize the limited funds available for all facilities to address the most significant service disruptions to ensure that the most needed facilities are fully funded. We seek comment below on how to define what costs are “reasonably incurred” and on how to interpret the phrase “to reasonably minimize disruption of service” as contemplated by the REA, and we propose an approach for prioritization of reimbursement to stations with a greater level of service disruption to preserve limited funds.

**a. Costs Reasonably Incurred**

57. As described below, we propose that eligible costs for Category (1) and Category (2) stations are similar to eligible costs for full power and Class A stations in the repack and therefore should be reimbursed in a similar manner. We propose, however, that the cost for Category (3) stations should be subject to a graduated priority system and reimbursable only when the disruption of service is significant enough to make it reasonable for a station to incur costs to minimize the disruption, and then on a scale that balances the level of the service disruption with the need to maximize the finite funds and ensure the most significantly impacted facilities are fully funded. We seek comment on these proposals as detailed below.

**(i) Replacing or Restoring Facilities – Category (1) and (2) Stations**

58. The existing reimbursement program for full power and Class A stations seeks to reimburse costs reasonably incurred for stations to move their facilities to a new channel that was assigned as a result of the incentive auction repacking process using reasonable efforts to

preserve each station's coverage area and population served. We believe it is in the public interest to develop a similar standard for the reimbursement of costs associated with Category (1) stations because the nature of the displacement of the FM station and the types of costs incurred are similar. We seek comment on these conclusions. We believe the goal for Category (1) stations should be to rebuild their facility to reasonably replicate the station's coverage area and population served, similar to the standard applicable to full power and Class A stations. Further, we believe that Category (1) stations should be eligible for reimbursement for costs similar to full power and Class A stations to move and reconstruct the current facilities at a new site or tower location, including costs of equipment, professional services such as engineering, and tower and construction work. We believe that such stations are likely to experience the most significant disruption of service of all FM stations because they will be required to entirely or partially dismantle and reconstruct their facilities. As a result, if sufficient funds allocated to reimburse FM stations exist in the Reimbursement Fund, we believe that Category (1) stations should be reimbursed for up to 100 percent of eligible costs similar to the reimbursements provided to impacted full power and Class A stations. As noted above, we believe only a very small number of stations are likely to be included in this category and therefore we do not believe the reimbursement of these stations is likely to be a primary resource demand on the Reimbursement Fund. We seek comment on these conclusions.

59. Examples of reimbursable equipment costs that we believe could be reasonably incurred include transmitters, antennas, coaxial cable or wave guides, and associated equipment needed to reasonably replicate the service being lost. We propose that existing equipment should be reused as appropriate. To the extent that existing equipment cannot be reused, we propose that new equipment may be reimbursable if needed to reasonably replicate service and coverage area.

We propose that the costs of engineering to determine what technical facilities are needed to replace existing service at a new site should be considered reimbursable expenses, as well as transportation costs of physically moving equipment to a new site or new location on a tower and any engineering costs associated with the move. We seek comment on these proposals.

60. We believe it is also in the public interest to develop a similar standard for eligible expenses for reimbursement of Category (2) stations because the types of costs incurred are also similar. We seek comment on these conclusions. We believe the goal for Category (2) stations should be to restore the station's existing facility. For example, Category (2) stations could reasonably incur costs that are related to their need to temporarily dismantle equipment or modify their physical facilities. Examples of reimbursable costs could include costs of equipment, professional services such as engineering, and tower and construction work, similar to the costs incurred by full power and Class A stations. Additionally, similar to Category (1), the service disruptions associated with these costs are likely to be significant in magnitude, but the number of stations incurring such costs is likely to be very small and not the most significant drain on the Reimbursement Fund. Therefore, we propose that, if sufficient funds allocated to reimburse FM stations exist in the Reimbursement Fund, Category (2) stations should be reimbursed for up to 100 percent of eligible costs similar to full power and Class A stations. We seek comment on this proposal.

**(ii) Interim Facilities – Category (3) Stations**

61. In the full power and Class A reimbursement program, the costs of interim facilities are reimbursed in the same manner as other costs incurred for a station to change channels. With respect to the types of costs that would qualify for reimbursement as interim facilities, we seek to apply the same approach to FM stations. We propose that Category (3) stations be reimbursed



for the cost of constructing new auxiliary facilities or upgrading existing auxiliary facilities.

This would permit FM stations to continue broadcasting while their primary facilities are off the air due to the need to protect tower personnel working on modifications related to the reorganization of broadcast television spectrum. Reimbursable costs could include costs of equipment, professional services such as engineering, and tower and construction work.

62. As described in more detail below, we tentatively conclude that reimbursement of interim facility costs should be linked to the level of service disruption avoided by resorting to interim facilities, and therefore propose to reimburse on a graduated priority system reflecting a percentage of total costs for these interim facilities. We further tentatively conclude that it is not unreasonable for there to be some temporary disruption of service to permit construction work or maintenance on a collocated, adjacent, or nearby station. FM stations regularly power down or remain silent for temporary periods to accommodate tower or antenna work and transmitter maintenance, and we conclude from this fact that such actions are ordinary and reasonable occurrences. We therefore believe that it is appropriate to reimburse costs for interim facilities only if they are needed to avoid service interruptions that would otherwise exceed ordinary construction or maintenance requirements. Furthermore, operating from interim facilities does not require service that is identical to the station's primary service. We believe this different approach is justified by the different standard enunciated in the REA, requiring us to consider what expenses "reasonably minimize" disruption of service rather than the Spectrum Act's mandate to reimburse expenses resulting from a channel change. Furthermore, we anticipate that the majority of reimbursement requests from FM stations will be in Category (3), and that they will account for the majority of the demand by FM stations for resources from the Reimbursement Fund. Thus, we tentatively conclude that a graduated scale is in the public

interest because it properly reflects the level of service disruption, which could vary from hours to weeks or even months, and therefore balances our need to preserve finite funds for the most significant instances of service disruption. Under this proposal, reimbursement percentages in excess of those proposed below might be available if, after making all the payments for interim facilities and other eligible expenses, there is sufficient money to pay a higher reimbursement percentage to FM stations in the Reimbursement Fund. We seek comment on these proposals herein.

63. We believe that the amount of broadcaster reimbursement for interim facilities should be linked to the amount of time the FM station is off the air due to the reorganization of broadcast television spectrum. These time periods will likely range from hours to, in extreme and hopefully rare cases, months. Additionally, we believe that the times of day during which stations are off the air should also play a part in our calculus. Some stations may be subject to limited service disruptions, for instance, if tower work or work on co-tenant antennas is limited to nighttime hours which would minimize broadcast time lost during peak listening hours. Such stations will not be as adversely affected as those required to reduce power or go off-air for extended periods of time. As to the latter group of affected stations, we find that the reimbursement for interim facilities should be greater the longer they are required to be off the air. The longer the lost airtime, the more service disruption and, thus, the greater justification for reimbursement for the construction of permanent auxiliary facilities.

64. Further, we note that transmissions from interim facilities would not exactly replicate the areas or populations covered from the licensed transmitter site. Thus, we propose that 80 percent of an FM station's coverage area or covered population should be replicated by the interim facility in order to constitute reasonably minimal disruption of service. In another

context, when a rule requires provision of a certain strength signal to an entire community, the Commission has held that when a station provides that signal strength to 80 percent or more of either the area or the population of the community, such a signal may be considered to be in substantial compliance with the rule. We believe this 80 percent standard is an acceptable yardstick for measuring interim FM service, especially given that near-exact replication of a station's coverage area from an alternative site, in many if not most cases, may not be achieved without significant expense. Accordingly, we propose that FM signal coverage of either 80 percent of the area or 80 percent of the population covered by an FM station at its licensed site be considered to be substantial interim coverage and, thus, tentatively conclude it would meet the REA standard of reasonably minimizing disruption of service. We invite comment on this proposal, including comment on the costs of requiring a greater or lesser level of interim service.

65. We seek comment on the need to develop a prioritization scheme for reimbursement of FM broadcast stations under either statutory interpretation of the amounts available to reimburse such stations. We seek comment on the following graduated priority system of reimbursement for interim facilities constructed to minimize service disruptions to FM broadcast stations forced to go off-air due to the reorganization of broadcast television spectrum. We note that additional percentages for reimbursement might be available if, after making all the payments for interim facilities and other eligible expenses, there is sufficient money to pay a higher reimbursement percentage to FM stations in the Reimbursement Fund. If adopted, we propose to direct the Media Bureau to determine whether and what higher percentage of funds should be paid to Category (3) stations.

- Stations Off-Air for Less Than 24 Hours, or Off-Air Only During Hours from 10:00 p.m. – 6:00 a.m. Local Time or Less Than Five Non-Peak Broadcast Hours Per Day: No reimbursement. We propose that such periods off-air be considered a de minimis disruption of service.

- Stations Off-Air for 24 Hours to 10 Days: May be reimbursed up to 50 percent of eligible costs reasonably incurred to construct new auxiliary facilities, to upgrade existing auxiliary facilities to cover 80 percent of the covered area and/or population of the existing facility, or to build interim facilities for eligible secondary services.
- Stations Off-Air for 11 Days to 30 Days: May be reimbursed up to 75 percent of eligible costs reasonably incurred to construct new auxiliary facilities, to upgrade existing auxiliary facilities to cover 80 percent of the covered area and/or population of the existing facility, or to build interim facilities for eligible secondary services.
- Stations Off-Air for More than 30 Days: May be reimbursed up to 100 percent of eligible costs reasonably incurred to construct new auxiliary facilities, to upgrade existing auxiliary facilities to cover 80 percent of the covered area and/or population of the existing facility, or to build interim facilities for eligible secondary services.

66. We seek comment on these issues and on whether reimbursing FM stations on a graduated scale is in the public interest. In particular, we seek comment on whether failing to pro-rate the amount of reimbursement for interim facilities might reduce reimbursement for all affected FM stations, given the total amount of money available to FM stations for reimbursements. We also request comment on the time off-air benchmarks set forth in paragraph 65, and whether they should be adjusted up or down. In particular, we seek comment on whether time off-air during nighttime and early morning hours should be considered de minimis and, if not, what level of reimbursement for auxiliary facilities should be allowed for such stations to provide interim nighttime service. If commenters disagree with the proposed reimbursement scheme, what alternative proposals do they recommend to ensure we allocate the limited funds fairly and equitably across all FM stations?

67. We acknowledge that the graduated scale could be subject to manipulation where the construction project is prolonged in order to reach a number of days that correlates to a higher reimbursement percentage. We believe that this concern is mitigated by the fact that the FM station will ordinarily not be in control of the repacked television station's construction project, and that a repacked television station is unlikely to prolong for the benefit of the FM station the time period that it employs vendors and service providers to perform construction. Nevertheless, in order to minimize the potential for gaming the system, we seek comment on whether to pay reimbursement for interim stations only after the period of time has expired and the number of days can be and is certified by the station. We also seek comment on whether to require certification by the FM station concerning the number of days the station could not broadcast from its primary facility due to construction work of a repacked television station. As noted herein, we intend to conduct audits, data validations, and site visits, as appropriate, to prevent waste, fraud, and abuse. As part of that process, we could require a repacked television station to provide, upon request, a statement or other information regarding the dates that work was being done that impacted the FM station. We seek comment on these issues and on additional ways we can minimize this potential problem.

68. To the extent that a Category (3) station is required to lease tower space for a new auxiliary facility, we propose to allow reimbursement only for those lease payments covering the period of time during which the primary station is off the air due to the reorganization of broadcast television spectrum. In other words, we will not reimburse for tower lease payments except during the period when the repacked television station's construction work is actively preventing the FM station from broadcasting from its primary facility and not for any period of time thereafter. We request comment on this proposal.

**b. Channel Change Equipment**

69. We expect that no FM broadcast station will be forced to change its frequency as a result of the reorganization of broadcast television spectrum and, thus, we tentatively conclude that expenses for retuning or replacing antennas or transmitters to accommodate channel changes will not be eligible for reimbursement. We seek comment on this expectation.

**c. Equipment Upgrades and Reuse of Existing Equipment**

70. As noted above, full power and Class A stations can be reimbursed only for comparable facilities, while we propose that LPTV/translators may in certain cases require modified facilities due to the fact that LPTV/translators may need to change locations and not just channels.

Similarly, we tentatively conclude that the full power and Class A comparable facilities reimbursement standard cannot be applied in the same manner to FM stations in Categories (1) and (2) because the goal is to reasonably replicate the service type and area from a different location (Category (1)) or restore service using alternate equipment (Category (2)). In some cases, this can be accomplished using existing equipment or its equivalent, but in other cases this will require modified or differently configured equipment. For instance, a move of an FM station's antenna to a lower spot on the same tower could, in order to replicate the station's existing signal contours, require replacement equipment with an increase in ERP, either by using a transmitter with higher power output or an antenna with higher gain. In the (we expect rare) cases in which a station is forced to move to another tower, reasonably replicating current service might involve both of those options and/or design and construction of an antenna with a directional pattern, in order to avoid prohibited interference to other FM stations.

71. To the extent that a Category (1) station would propose to construct a new tower, we propose to reimburse tower construction expenses only upon a showing that no space is available

on other local towers that would enable it to reasonably replicate current service. Even if it were able to make such a showing, we seek comment on whether and how we should discount any reimbursement for tower construction costs, given that such “vertical real estate” carries with it the potential for revenue generation for the FM station, perhaps in substantial amounts. We seek comment on this proposal.

72. Similar to our tentative conclusion above concerning LPTV/translators, we also propose that we will follow the Commission’s determination in the existing reimbursement program and not reimburse stations for new, optional features in equipment that are not already present in the equipment being replaced. For example, we would not reimburse an analog-only FM station to add hybrid digital capability. A station that contemplates a rule-compliant modification to a higher station class or to an expanded service area as part of a required move may do so, but we propose to limit reimbursement only to costs needed to return the station to its original service area. We seek comment on these proposals. While the REA contains a provision precluding duplicative payments relating only to “interim facilities,” we tentatively conclude that FM broadcast stations that receive or have received reimbursement of expenses from sources of funding other than the Reimbursement Fund, such as co-located television stations and/or tower owners providing reimbursement under contractual provisions, will not receive reimbursement for those expenses from the Reimbursement Fund. We tentatively conclude that a cost that is reimbursed by another source of funding is not a “cost . . . incurred” by the FM broadcast station under Section 511(l)(1)(A). We seek comment on this tentative conclusion.

73. In addition, the Commission required full power and Class A stations seeking reimbursement to reuse their own equipment to the extent possible, rather than acquiring new equipment to be paid for from the Reimbursement Fund, and to “provide a justification when

submitting their estimated cost form as to why it is reasonable under the circumstances to purchase new equipment rather than modify their . . . current equipment. . . .” We propose to adopt a similar requirement that FM stations reuse their own equipment, to the extent possible. As noted above, we expect that FM stations will not be required to change frequencies, so there should be no issues regarding channel-related equipment modifications. Thus, we believe it is reasonable to require FM stations seeking reimbursement to provide a justification why it is reasonable to purchase new equipment rather than reuse existing equipment. We seek comment on this proposal.

**d. Lost Revenues**

74. The REA, like the 2012 Spectrum Act, prohibits reimbursement of FM broadcast stations for “lost revenues.” In the Incentive Auction R&O, the Commission defined “lost revenues” to include “revenues that a station . . . loses as a direct or ancillary result of the reverse auction or the repacking process.” We propose to adopt a similar definition of “lost revenues” for purposes of reimbursing FM broadcast stations: “revenues that a station loses as a direct or ancillary result of the reorganization of broadcast television spectrum, including the reverse auction and the repacking process.” Under this definition, we would not reimburse a station’s loss of advertising revenues while it is off the air implementing either replacement or interim facilities, or for refunds a station is required to make for payments for airtime as a result of being off the air in order to implement such a facility change. We seek comment on our proposal and whether there are other additional categories of costs that FM stations may incur that would constitute “lost revenues” not eligible for reimbursement under the REA.

**D. Reimbursement Process**



75. Our goal is to develop a reimbursement process for the newly eligible entities that is as simple and straightforward as possible to minimize both the costs associated with reimbursement as well as the burdens on affected parties and the Commission. At the same time, we are committed to a process that is fair and equitable to all eligible entities and that maximizes the funds available for reimbursement by avoiding waste, fraud, and abuse.

76. As discussed below, we propose to reimburse eligible LPTV, TV translator, and FM broadcast stations using a procedure that is substantially similar to what is currently being used by the Commission to provide reimbursements to full power and Class A stations and MVPDs. We believe that using a process and resources that have proven effective is a reasonable approach as it should result in a smooth and expeditious reimbursement process for LPTV/translator and FM stations. At the same time, we propose to make certain adjustments and simplifications to this process as we describe below. We invite comment generally on whether and how the process might be further streamlined in light of the fact that the money available to reimburse LPTV/translator and FM stations is less than that allocated to full power, Class A, and MVPD entities, individual entity expenses may also be expected to be smaller, and many of the stations seeking reimbursement may already have incurred the costs associated with the transition.

#### **1. Eligibility Certification**

77. We propose to require LPTV/translator and FM stations that believe they meet the eligibility requirements and intend to request reimbursement for eligible expenses, to file a form (Eligibility Certification) indicating that they intend to request reimbursement funds. We seek comment on this proposal. We propose that entities be required to certify on the Eligibility Certification that they meet the eligibility criteria adopted in this proceeding and provide

documentation or other evidence to support their certification. For example, LPTV/translator stations may be required to provide evidence to support their certification that they meet the minimum operating requirement adopted in this proceeding to be eligible for reimbursement under the REA. Such evidence could include evidence of the programming aired by the station during the period of time in question, as well as electric power bills, and we seek comment on other types of evidence that might be used to demonstrate that a station was transmitting during the relevant time period. Similarly, FM stations could be required to identify the repacked TV station that caused it to be eligible for reimbursement and to provide evidence to support its certification that it was off the air for a sufficient period of time to be eligible for reimbursement for interim facilities, and the period of time it was, or expects to be, silent. As stated previously, the Commission previously determined that, with respect to the incentive auction reimbursement program, “audits, data validations, and site visits are essential tools in preventing waste, fraud, and abuse, and that use of these measures will maximize the amount of money available for reimbursement.” With respect to reimbursing low-power broadcast stations, we contemplate that a third party firm on behalf of, or in conjunction with, the Media Bureau may conduct audits, data validations, site visits or other verifications to substantiate the supporting evidence and representations of entities that certify that they meet the eligibility criteria adopted in this proceeding to the extent necessary. We propose to direct such entities to make available any relevant documentation upon request from the Commission or its contractor. We emphasize that a false certification may result in disqualification and other sanctions provided for in the Communications Act and the Commission’s rules. We invite comment on this approach and on possible other kinds of evidence and/or documentation the Media Bureau should require LPTV/translator and FM stations to submit to support their Eligibility Certifications.

## **2. Estimated Expenses**

78. We also propose to require LPTV/translator and FM stations to list on a revised Reimbursement Form their existing broadcasting equipment and the types of costs they expect to incur. In the full power and Class A program, the Media Bureau developed a list of the types of costs stations were most likely to incur together with a range of prices applicable to such expenses. This cost catalog is embedded in the Reimbursement Form used by full power and Class A stations. We intend to develop a revised cost catalog to help LPTV/translator and FM stations provide estimated costs. Alternatively, these stations, like full power and Class A stations, may choose instead to provide their own estimates or actual costs. As noted above, in the Incentive Auction R&O, the Commission required full power and Class A broadcasters and MVPDs eligible for reimbursement to file a form providing estimates of their channel relocation costs. We propose to adopt a consistent approach for entities newly eligible for reimbursement. Specifically, similar to the current process used by full power and Class A stations and MVPDs using the Reimbursement Form, we propose that eligible LPTV/translator and FM stations submit a revised version of our existing Reimbursement Form that will contain a new cost catalog. The new cost catalog will offer ranges of prices for the potential expenses that can be used to generate total estimated costs. For example, LPTV/translator stations may be required to indicate whether they will need to purchase new equipment in order to operate on their new channel, or whether they can reuse some of their existing equipment. FM stations may be required to indicate whether they will need to move to a different tower or a different location on the same tower, and whether they will have to go silent or power down temporarily to move or to permit work on their existing tower as a result of changes being made to a repacked full power or Class A station.

79. We note that some LPTV/translator and FM stations will already have incurred costs eligible for reimbursement by the time we adopt rules in this proceeding and begin accepting Eligibility Certifications and Reimbursement Forms. We propose to permit entities to indicate their actual costs instead of providing estimates on the Reimbursement Form for costs already incurred in their initial filings with the Commission. We seek comment on this proposal.

80. We tentatively conclude that the Reimbursement Form for use by newly eligible entities should be simpler and easier to use than the forms used by full power and Class A stations and MVPDs. We seek comment on how we can modify the Form to make it simpler to use. We propose to consider methods by which the revised cost catalog could more readily determine a reasonable estimate for newly eligible stations than the current form used by full power and Class A stations. Are there other ways that a reasonable estimate of expenses can be more readily derived than under the current process? We tentatively conclude that an approach that would eliminate altogether the requirement to submit estimated expenses would not provide the Commission with information concerning the potential total demand on the Reimbursement Fund and other information necessary for the Media Bureau and Fund Administrator to make reasoned allocation decisions and determine whether reimbursement claims are reasonable, as required by the REA. To the extent, however, that parties disagree with our tentative conclusion, we seek comment on how a reimbursement process without the submission of estimates would work? Without estimates, how would the Media Bureau determine allocations that assure a fair and equitable distribution of the finite Reimbursement Fund? Supporters of a reimbursement process without estimated expenses should also address how such an approach is consistent with Section 511(m)(2) of the REA. We seek comment on our tentative conclusions.

### **3. Reimbursement Allocations**

81. We propose that, once the Media Bureau completes its review of the Eligibility Certifications and Reimbursement Forms, it will issue an initial allocation from the Reimbursement Fund to each eligible LPTV/translator and FM station, which will be available to the entity to draw down as expenses are incurred. In the context of the existing reimbursement process for full power and Class A stations, the Media Bureau exercised discretion to determine the appropriate allocation amount based on the circumstances and information available from submitted Reimbursement Forms. Consistent with this approach, as noted in the Order below, we direct the Media Bureau to make allocation decisions for stations eligible for reimbursement under the REA. The amount of the initial allocation, as well as the total amount allocated to each entity, will depend in part on the number of LPTV/translator stations and the number of FM stations that file an Eligibility Certification and the amount available for reimbursement for each type of entity. For example, the Media Bureau may give entities an allocation that is a percentage of their total costs eligible for reimbursement, similar to the approach we took for full power and Class A stations and MVPDs. Alternatively, it could allocate the same fixed amount to entities that must take similar steps as a result of, or are similarly affected by, the reorganization of broadcast television spectrum (i.e., a fixed amount to all FM stations that must be off the air for 11-30 days, and a different fixed amount to all FM stations that must be off the air for 24 hours to 10 days). We invite comment on each of these approaches.

82. Subsequent Allocations. We propose that, after the initial allocation of reimbursement funds to eligible LPTV/translator and FM stations, the Media Bureau may issue one or more subsequent allocation(s). The timing and amount of these subsequent allocation(s) will depend in part on the funds remaining in the LPTV/translator and FM portions of the Reimbursement Fund, the eligible expenses entities have incurred, and the Commission's goal in terms of the

percentage or total dollar amount of eligible costs we expect to be able to cover for each entity based on the steps they must take as a result of the reorganization of broadcast television spectrum. We seek comment generally on this proposed reimbursement process.

83. **Prioritization of Certain Costs.** To the extent that the total amount of reimbursement funds available to LPTV/translators or FM stations may not be sufficient to cover all eligible expenses at the end of the program, it may be necessary to establish a prioritization scheme for reimbursing eligible expenses. We propose to direct the Media Bureau to perform this prioritization, if necessary. In order to assist the Media Bureau, we seek comment on whether we should prioritize the payment of certain costs, such as certain equipment and engineering expenses, over other types of expenses, such as project management fees, for LPTV/translator and FM stations. For instance, project management fees have proven difficult for the Media Bureau and Fund Administrator to validate in the context of the ongoing reimbursement effort for full power and Class A stations and MVPDs. Given that the amount available for reimbursement for LPTV/translator and FM stations may not be sufficient to cover all eligible expenses incurred by these entities, we believe it may make sense to prioritize, at least initially, certain expenses to maximize the possibility that these costs are covered for all eligible entities. The Media Bureau could, for example, limit the initial allocation provided to LPTV/translator stations to an amount necessary to cover the costs related to any necessary transmitter, transmission line, and antenna equipment, as well as engineering expenses necessary to locate a new channel. Any funds remaining in the LPTV/translator portion of the Reimbursement Fund after these expenses are covered could be distributed in a subsequent allocation. We seek comment generally on this approach. If we were to prioritize certain equipment and engineering

costs, which such costs should be prioritized for LPTV/translator stations and which should be prioritized for FM stations?

#### **4. Requests for Reimbursement**

84. Once the Commission has issued an initial allocation to each eligible LPTV/translator and FM station, we propose to allow these entities to submit claim(s), together with any required supporting invoices and other cost documentation, for reimbursement for any eligible costs they have incurred, using a method consistent with the existing process. We propose that the Media Bureau, together with the Fund Administrator, will review each reimbursement claim and, if approved, authorize a draw down from the entity's individual allocation. We propose to allow entities to submit multiple reimbursement requests as they incur expenses throughout the reimbursement period. As noted above, we also propose to allow entities that have already incurred costs at the time they make their initial filings with the Commission to submit actual costs instead of estimates. We seek comment on these proposals.

#### **E. Financial Forms and Procedures**

85. We propose to use revised versions of the financial forms currently being used by full power, Class A, and MVPD entities for purposes of reimbursing eligible LPTV/translator and FM stations. We also propose to use the same procedures to provide reimbursement payments to these newly eligible entities. These procedures were set forth in the Financial Procedures PN. We seek comment generally on this approach. Are there any procedures that we should alter for purposes of reimbursing these newly eligible entities?

86. Specifically, we propose to require LPTV, TV translators, and FM stations to submit their Eligibility Certification, cost estimates, and subsequent requests for reimbursement for expenses they have incurred, together with any required supporting documentation, using the

Reimbursement Form (FCC Form 2100, Schedule 399), which we plan to revise for this purpose. As required for full power and Class A stations and MVPDs, we propose that LPTV/translator and FM stations submit the Reimbursement Form electronically via the Commission's LMS database. We propose to require LPTV/translator and FM stations to use a procedure and form similar to our existing FCC Form 1876 and file electronically in the CORES Incentive Auction Financial Module. Entities will be able to track reimbursement payments using the Auction Payments component of the CORES Incentive Auction Financial Module.

87. As discussed in the Order below, we direct the Media Bureau together with the Office of Managing Director to revise these reimbursement forms and procedures as necessary for use by LPTV/translator and FM stations.

#### **F. Measures to Prevent Waste, Fraud, and Abuse**

88. As with full power, Class A, and MVPD entities, we intend to establish strong measures to protect against waste, fraud, and abuse with respect to disbursements from the Reimbursement Fund for newly eligible entities. The Media Bureau, with assistance from the Fund Administrator, will review the information entities provide in their Eligibility Certification and may require additional information to validate whether the entity is, in fact, eligible for reimbursement pursuant to the criteria established in this proceeding. We propose to require entities to document their actual expenses, including by providing all relevant invoices and receipts, and to retain other relevant records substantiating their certifications and reimbursement claims. Similar to the existing requirement for full power, Class A, and MVPD entities, we also propose to require LPTV/translator and FM stations seeking reimbursement to retain all relevant documents pertaining to construction or other reimbursable changes or expenses for a period



ending not less than 10 years after the date on which it receives final payment from the Reimbursement Fund. We invite comment on these proposals.

89. We anticipate that the Reimbursement Form we develop for use by LPTV/translator and FM stations will contain certifications similar to those on the Reimbursement Form used by full power, Class A, and MVPD entities. Thus, an LPTV/translator or FM station seeking reimbursement will be required to certify, *inter alia*, that it believes in good faith that it will reasonably incur all of the estimated costs that it claims as eligible for reimbursement on the estimated cost form, it will use all money received from the Reimbursement Fund only for expenses it believes in good faith are eligible for reimbursement, and it will comply with all policies and procedures related to reimbursement. In addition, we intend to conduct audits, data validations, and site visits, as appropriate, to prevent waste, fraud, and abuse and to maximize the amount of money available for reimbursement. To ensure transparency with respect to the Reimbursement Fund, we plan to make eligibility and actual cost information available to the public as well as information regarding Reimbursement Fund disbursements. If we discover evidence of intentional fraud, we intend to refer the matter to the Commission's Office of Inspector General or to law enforcement for criminal investigation, as appropriate. We invite comment on these proposals. Are there other steps we should take to avoid potential fraud and ensure that appropriate safeguards are applied to the Reimbursement Fund?

#### **IV. ORDER**

90. The companion Order, which was adopted together with the NPRM, appears separately in the Federal Register.

#### **V. PROCEDURAL MATTERS**

##### **A. Initial Regulatory Flexibility Analysis**

91. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Federal Communications Commission (Commission) has prepared this present Initial Regulatory Flexibility Analysis (IRFA) concerning the possible significant economic impact on small entities by the policies and rules proposed in the Notice of Proposed Rulemaking (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.

**B. Need for, and Objectives of, the Proposed Rules**

92. The NPRM proposes rules to implement Congress's recent directive that the Commission reimburse certain Low Power Television (LPTV), television translator (TV translator), and FM broadcast stations for costs incurred as a result of the Commission's broadcast television spectrum incentive auction. When Congress authorized the Commission to conduct the incentive auction as part of the 2012 Spectrum Act, it required the Commission to reimburse certain costs incurred by full power and Class A television licensees that were reassigned to new channels as a result of the auction, as well as certain costs incurred by multichannel video program distributors (MVPDs) to continue to carry such stations. On March 23, 2018, Congress adopted the Reimbursement Expansion Act (REA), which amends Section 6403 of the Spectrum Act to expand the list of entities eligible to be reimbursed for auction-related expenses to include LPTV, TV translator, and FM broadcast stations, and to provide additional funds to the Reimbursement Fund to be used for this purpose. The REA also increases the funds available to

reimburse full power and Class A stations and MVPDs, and provides funds to the Commission for consumer education.

93. The NPRM proposes a mechanism for reimbursing the newly eligible entities that is substantially similar to the process currently used by the Commission to reimburse full power and Class A licensees and MVPDs as established in the Incentive Auction R&O. The NPRM:

- Tentatively concludes that LPTV and TV translator stations (collectively referred to as LPTV/translator stations) are eligible for reimbursement if (1) they filed an application during the Commission's Special Displacement Window and obtained a construction permit, and (2) were licensed and transmitting for at least 9 of the 12 months prior to April 13, 2017, as required by the REA.
- Tentatively concludes that the Commission will reimburse LPTV/translator stations for their reasonable costs to construct the facilities authorized by the grant of the station's Special Displacement Window application, but will require stations to reuse existing equipment and take other measures to mitigate costs where possible.
- Tentatively concludes that both full power FM stations and FM translators that were licensed and transmitting on April 13, 2017, using the facilities impacted by the repacked television station are eligible for reimbursement under the REA. The NPRM proposes that this will include FM stations that incur costs because they must permanently relocate, temporarily or permanently modify their facilities, or purchase or modify auxiliary facilities to provide service to at least 80 percent of their primary station's coverage area or population during a period of time when construction work is occurring on a collocated repacked television station's facilities.
- Proposes to reimburse up to 100 percent of the costs eligible for reimbursement for FM stations that must relocate permanently, or temporarily or permanently modify facilities, and seeks comment on a graduated, prioritized system to reimburse FM stations for the cost to purchase or modify auxiliary equipment to avoid going silent as a result of the repacking process.

- Proposes to require LPTV/translator and FM stations seeking reimbursement to file with the Commission one or more forms certifying that they meet the eligibility criteria established in this proceeding for reimbursement, providing information regarding their current broadcasting equipment, and providing an estimate of their costs eligible for reimbursement. The NPRM invites comment on ways to streamline the submission of this information for these entities.
- Proposes that after the submission of information, the Media Bureau will provide eligible entities with an allocation of funds, to be available for draw down as the entities incur expenses. The NPRM proposes that the Media Bureau will make an initial allocation toward eligible expenses, followed by subsequent allocation(s) as needed, to the extent funds remain for LPTV/translator stations and FM stations in the Reimbursement Fund, and seeks comment on how to determine the amount of these allocations.
- Proposes to use revised versions of the financial forms currently being used by full power, Class A, and MVPD entities for purposes of reimbursing eligible LPTV/translator and FM stations, and proposes to use the same procedures to provide reimbursement payments to these newly eligible entities.
- Discusses the measures the Commission proposes to take to protect the Reimbursement Fund against waste, fraud, and abuse.

### **C. Legal Basis**

94. The proposed action is authorized pursuant to sections 1, 4, 303, and 336(f) of the Communications Act of 1934, as amended, Section 6403 of the Middle Class Tax Relief and Job Creation Act of 2012, and Section 511, Division E, Title V of the Consolidated Appropriations Act, 2018, Pub. L. 115-141 (2018), 47 U.S.C. 151, 154, 303, 336(f), 1452.

### **D. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply**

95. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

96. Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment. The Small Business Administration has established a size standard for this industry of 750 employees or less. Census data for 2012 show that 841 establishments operated in this industry in that year. Of that number, 819 establishments operated with less than 500 employees. Based on this data, we conclude that a majority of manufacturers in this industry are small.

97. Audio and Video Equipment Manufacturing. This industry comprises establishments primarily engaged in manufacturing electronic audio and video equipment for home entertainment, motor vehicles, and public address and musical instrument amplification. Examples of products made by these establishments are video cassette recorders, televisions,

stereo equipment, speaker systems, household-type video cameras, jukeboxes, and amplifiers for musical instruments and public address systems. The SBA has established a size standard for this industry, in which all firms with 750 employees or less are small. According to U.S. Census data for 2012, 466 audio and video equipment manufacturers were operational in that year. Of that number, 465 operated with fewer than 500 employees. Based on this Census data and the associated size standard, we conclude that the majority of such manufacturers are small.

98. Radio Stations. This economic Census category “comprises establishments primarily engaged in broadcasting aural programs by radio to the public.” The SBA has created the following small business size standard for this category: those having \$38.5 million or less in annual receipts. Census data for 2012 shows that 2,849 firms in this category operated in that year. Of this number, 2,806 firms had annual receipts of less than \$25,000,000, and 43 firms had annual receipts of \$25,000,000 or more. Because the Census has no additional classifications that could serve as a basis for determining the number of stations whose receipts exceeded \$38.5 million in that year, we conclude that the majority of television broadcast stations were small under the applicable SBA size standard.

99. Apart from the U.S. Census, the Commission has estimated the number of licensed commercial AM radio stations to be 4,429 stations and the number of commercial FM radio stations to be 6,741, for a total number of 11,170. Of this total, 9,898 stations had revenues of \$38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) in October 2014. In addition, the Commission has estimated the number of noncommercial educational FM radio stations to be 4125. NCE stations are non-profit, and therefore considered to be small entities. Therefore, we estimate that the majority of radio broadcast stations are small entities.

100. Low Power FM Stations. The same SBA definition that applies to radio stations would apply to low power FM stations. As noted above, the SBA has created the following small business size standard for this category: those having \$38.5 million or less in annual receipts. The Commission has estimated the number of licensed low power FM stations to be 2150. In addition, as of June 30, 2017, there were a total of 7604 FM translator and FM booster stations. Given that low power FM stations and FM translators and boosters are too small and limited in their operations to have annual receipts anywhere near the SBA size standard of \$38.5 million, we will presume that these licensees qualify as small entities under the SBA definition.

101. We note again, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations must be included. Because we do not include or aggregate revenues from affiliated companies in determining whether an entity meets the applicable revenue threshold, our estimate of the number of small radio broadcast stations affected is likely overstated. In addition, as noted above, one element of the definition of “small business” is that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio broadcast station is dominant in its field of operation. Accordingly, our estimate of small radio stations potentially affected by the proposed rules includes those that could be dominant in their field of operation. For this reason, such estimate likely is over-inclusive.

102. Television Broadcasting. This economic Census category “comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public.” These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a

predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for Television Broadcasting firms: those having \$38.5 million or less in annual receipts. The 2012 economic Census reports that 751 television broadcasting firms operated during that year. Of that number, 656 had annual receipts of less than \$25 million per year. Based on that Census data we conclude that a majority of firms that operate television stations are small. We therefore estimate that the majority of commercial television broadcasters are small entities.

103. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of “small business” is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

104. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 390. These stations are non-profit, and therefore considered to be small entities.



105. There are also 2,309 LPTV stations, including Class A stations, and 3727 TV translator stations. Given the nature of these services, we will presume that all of these entities qualify as small entities under the above SBA small business size standard.

**E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

106. The NPRM proposes the following revised reporting or recordkeeping requirements. To implement the REA, it is proposed that eligible entities file forms to demonstrate their eligibility and estimated costs for reimbursement. Specifically, the NPRM proposes to use revised versions of the financial forms currently being used by full power, Class A, and multichannel video programming distributors (MVPD) entities from the incentive auction for purposes of reimbursing eligible LPTV/translator and FM stations. The NPRM proposes to use the procedures to provide reimbursement payments to these newly eligible entities that are similar to those it used for reimbursement in the incentive auction. For example, the NPRM proposes that LPTV, TV translators, and FM stations be required to submit their Eligibility Certification, cost estimates, and subsequent requests for reimbursement for expenses they have incurred, together with any required supporting documentation, using the Reimbursement Form (FCC Form 2100, Schedule 399), which the Commission plans to revise for this purpose. As required for full power and Class A stations and MVPDs, the NPRM proposes that LPTV/translator and FM stations submit the Reimbursement Form electronically via the Commission's Licensing and Management System (LMS) database. The NPRM proposes to require LPTV/translator and FM stations to use a procedure and form similar to the existing FCC Form 1876 and to file electronically in the CORES Incentive Auction Financial Module.

107. The Commission, as part of its continuing effort to reduce paperwork burdens, will invite the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements proposed in this document, as required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13.

**F. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered**

108. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.”

109. The NPRM proposes rules to implement the REA. The proposed rules are designed allow small entity broadcasters to seek reimbursement in such a manner that is streamlined and the least burdensome. The Commission will consider all comments submitted in connection with the NPRM including any suggested alternative approaches to implementing the REA that would reduce the burden and costs on smaller entities.

110. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Pub. L. 107-198, see 44 U.S.C. 3506(c)(4), the Commission will seek specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

**G. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rule**

111. None

## **H. Paperwork Reduction Act**

112. The NPRM contains proposed new or modified information collections. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements proposed in the NPRM, as required by the Paperwork Reduction Act of 1995 (PRA), Pub. L. 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002 (SBPRA), Pub. L. 107-198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

## **I. Ex Parte Rules**

113. Permit But Disclose. The proceeding this NPRM initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such

data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable.pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

## **J. Filing Requirements**

114. Comments and Replies. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC

20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

115. People with Disabilities. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

116. Availability of Documents. Comments, reply comments, and ex parte submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th St., SW, Room CY-A257, Washington, DC 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

## **VI. ORDERING CLAUSES**

117. Accordingly, IT IS ORDERED that, pursuant to the authority contained in Sections 1, 4, 303, and 336(f) of the Communications Act of 1934, as amended, Section 6403 of the Middle Class Tax Relief and Job Creation Act of 2012, and Section 511, Division E, Title V of the Consolidated Appropriations Act, 2018, Pub. L. 115-141 (2018), 47 U.S.C. 151, 154, 303, 336(f), 1452, the Notice of Proposed Rulemaking IS ADOPTED.

118. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed

Rulemaking and Order, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 73

Multichannel video programming distributors (MVPDs), Radio, Reporting and recordkeeping requirements, Television.

FEDERAL COMMUNICATIONS COMMISSION

Katura Jackson,  
Federal Register Liaison Officer,  
Office of the Secretary.

## **Proposed Rules**

### **PART 73 – RADIO BROADCAST SERVICES**

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 309, 310, 334, 336 and 339

2. Section 73.3701 is added to read as follows:

#### **§ 73.3701 Reimbursement Under the Reimbursement Expansion Act.**

(a) Definitions -

(1) FM station. For purposes of this section, the term FM station means those stations authorized by 47 CFR 73.310.

(2) Incentive Auction. For purposes of this section, the term Incentive Auction means the broadcast television spectrum incentive auction conducted under Section 6403 of the Spectrum Act specifying the new channel assignments and technical parameters of any broadcast television stations that are reassigned to new channels.

(3) Licensed. For purposes of this section, the term licensed means a station that was licensed or that filed a license application prior to April 13, 2017.

(4) Low power television station. For purposes of this section, the term low power television station means those stations authorized by 47 CFR 74.701.

(5) Predetermined cost estimate. For purposes of this section, predetermined cost estimate means the estimated cost of an eligible expense as generally determined by the Media Bureau in a catalog of expenses eligible for reimbursement.

(6) Reimbursement Expansion Act or REA. For purposes of this section, the term Reimbursement Expansion Act or REA means Division E, Financial Services & General Appropriation Act, 2018, Title V Independent Agencies, Pub. L. 115-141, Section 511 (codified

at 47 U.S.C. 1452(j) through (n)) adopted as part of the Consolidated Appropriations Act, 2018, Pub. L. 115-141 (2018).

(7) Reimbursement period. For purposes of this section, reimbursement period means the period ending July 3, 2023 pursuant to sections 510(j)(1)(A) and (B) of the REA.

(8) Replacement translator station. For purposes of this section, the term replacement translator station means analog to digital replacement translator stations authorized pursuant to 47 CFR 74.787(a)(5).

(9) Spectrum Act. For purposes of this section, the term Spectrum Act means Title VI of the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112-96).

(10) Special Displacement Window. For purposes of this section, the term Special Displacement Window means the displacement application filing window conducted April 10, 2018 to June 1, 2018 for low power television, TV translator, and analog-to-digital replacement translator stations that were displaced by the incentive auction and repacking process.

(11) Transmitting. For purposes of this section, the term transmitting means operating not less than 2 hours in each day of the week and not less than a total of 28 hours per calendar week for 9 of the 12 months prior to April 13, 2017.

(12) TV Broadcaster Relocation Fund. For purposes of this section, the TV Broadcaster Relocation Fund means the fund established by the REA.

(13) TV translator station. For purposes of this section, the term TV translator station means those stations authorized by 47 CFR 74.701.

(b) Only the following entities are eligible for reimbursement of relocation costs reasonably incurred:



(1) Low power television stations. Low power television stations that filed an application for construction permit during the Special Displacement Window and such application was subsequently granted. Station must have been licensed and transmitting for at least 9 of the 12 months prior to April 13, 2017.

(2) TV translator stations. TV translator stations that filed an application for construction permit during the Special Displacement Window and such application was subsequently granted. Station must have been licensed and transmitting for at least 9 of the 12 months prior to April 13, 2017.

(3) Replacement translator stations. Replacement translator stations that filed an application for construction permit during the Special Displacement Window and such application was subsequently granted. Station must have been licensed and transmitting for at least 9 of the 12 months prior to April 13, 2017.

(4) FM station. FM stations that experienced a disruption of service as a result of the reorganization of broadcast television spectrum under 47 U.S.C. 1452(b).

(c) Reimbursement process.

(1) Estimated costs.

(i) All entities that are eligible to receive reimbursement will be required to file an estimated cost form providing an estimate of their reasonably incurred costs.

(ii) Each eligible entity that submits an estimated cost form will be required to certify, inter alia, that:

(A) It is eligible for reimbursement;

(B) It believes in good faith that it will reasonably incur all of the estimated costs that it claims are eligible for reimbursement on the estimated cost form;

(C) It will use all money received from the TV Broadcaster Relocation Fund only for expenses it believes in good faith are eligible for reimbursement;

(D) It will comply with all policies and procedures relating to allocations, draw downs, payments, obligations, and expenditures of money from the TV Broadcaster Relocation Fund;

(E) It will maintain detailed records, including receipts, of all costs eligible for reimbursement actually incurred; and

(F) It will file all required documentation of its relocation expenses as instructed by the Media Bureau.

(iii) If an eligible entity seeks reimbursement for new equipment, it must provide a justification as to why it is reasonable under the circumstances to purchase new equipment rather than modify its corresponding current equipment.

(iv) Eligible entities that submit their own cost estimates, as opposed to the predetermined cost estimates provided in the estimated cost form, must submit supporting evidence and certify that the estimate is made in good faith.

(2) Final Allocation Deadline.

(i) Upon completing construction or other reimbursable changes, or by a specific deadline prior to the end of the Reimbursement Period to be established by the Media Bureau, whichever is earlier, all eligible entities that received an initial allocation from the TV Broadcaster Relocation Fund must provide the Commission with information and documentation, including invoices and receipts, regarding their actual expenses incurred as of a date to be determined by the Media Bureau (the “Final Allocation Deadline”).

(ii) If an eligible entity has not yet completed construction or other reimbursable changes by the Final Allocation Deadline, it must provide the Commission with information and documentation regarding any remaining eligible expenses that it expects to reasonably incur.

(3) Final accounting. After completing all construction or reimbursable changes, eligible entities that have received money from the TV Broadcaster Relocation Fund will be required to submit final expense documentation containing a list of estimated expenses and actual expenses as of a date to be determined by the Media Bureau. Entities that have finished construction and have submitted all actual expense documentation by the Final Allocation Deadline will not be required to file at the final accounting stage.

(4) Documentation requirements.

(i) Each eligible entity that receives payment from the TV Broadcaster Relocation Fund is required to retain all relevant documents pertaining to construction or other reimbursable changes for a period ending not less than 10 years after the date on which it receives final payment from the TV Broadcaster Relocation Fund.

(ii) Each eligible entity that receives payment from the TV Broadcaster Relocation Fund must make available all relevant documentation upon request from the Commission or its contractor.

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